

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1865 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ORIENTAL FIRE & GENERAL INSURANCE CO.LTD.

Versus

MANGALABEN WD/O SHANTILAL VADUKAR

Appearance:

1. First Appeal No. 1865 of 1985
MR DEEPAK M SHAH for Petitioner No. 1
MR MTM HAKIM for Respondent No. 1-3
MR YN OZA for Respondent No. 4-5
MR KANUBHAI I PATEL for Respondent No. 6-7
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CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under section 110 (D) of the Motor Vehicles Act is directed against the judgment & award dated 23-4-1985 in M.A.C.Claim Petition No. 343 of 1983 by M.A.C. Tribunal (Main) Vadodara, partly allowing the claim, awarding compensation of Rs.2,13,000/- with 6 % interest from the date of application till realisation of the amount.

2. In the present appeal, the impugned award has been assailed by the appellant Insurance Company on the ground that the Tribunal has failed to appreciate that the liability of the Insurance Company was limited to Rs.50,000/- and therefore, it was an error to make the Insurance Company liable for the sum of Rs.2,13,000/- ; and also on the ground that, the Tribunal failed to appreciate that the insured vehicle was a taxi, namely passenger vehicle, and therefore, the liability even under the liability clause is a limited liability. Thus the impugned award is not assailed on any other grounds, except limited liability of appellant Insurance Company.

3. We have perused the R & P requisitioned from the Claims Tribunal. The Insurance Company filed written statement vide Exhibit-16 and contended that there is no such file which shows that the vehicle No. GRS-3535 is insured with the respondent Insurance Company. The Insurance Company reiterated the earlier say that the vehicle involved in the accident is not insured with the Insurance Company, and the opponent reserve its right to reply in detail after the particulars about insurance are furnished by the applicant.

4. It is suggested from the R & P that the Claims Tribunal on the basis of the cover note exhibit-37 found that the vehicle GRS-3535 is insured with the appellant Insurance Company and the date of accident falls within the period of insurance coverage. The Claims Tribunal has observed in para-3 of its judgment that the cover note was produced with the consent of the opponent No.3 and since then, the contention, the taxi involved in the accident was not insured with the opponent No.3, has been given up.

After the production of the cover note exhibit-37 and the advocate for the Insurance Company gave up the dispute about the taxi having not been insured by

opponent no.3, no attempt is made by the Insurance Company to amend its written statement to raise the defence of limited liability, nor the insurance policy is produced at any stage during pendency of the claim petition before the Claims Tribunal. Thus, limited liability of the Insurance Company was not the defence before the Claims Tribunal put forth by the appellant Insurance Company. The ground on which the amount awarded is sought to be assailed in the present appeal is not available to the appellant Insurance Company, since it was not the defence of the appellant Insurance Company before the Claims Tribunal that the liability of the appellant Insurance Company is limited to the tune of Rs.50,000/-. Thus, the appeal is preferred on the ground, which in law, is not available to the appellant Insurance Company, looking to the defence before the Claims Tribunal put forth by the Insurance Company.

5. In this appeal the appellant Insurance Company filed Civil Application No. 4463 of 1985 under O-41 Rule-27 seeking to produce additional evidence in the form of insurance policy of the vehicle concerned. The said application has been dismissed by us today by assigning reasons thereunder. It may also be seen that the defence of limited liability has not been taken up before the Claims Tribunal by the Insurance Company, and the only defence was that the vehicle involved is not insured by the Insurance Company.

6. For the reasons aforesaid, we do not find any illegality or infirmity in the impugned award, so as to call for any interference with the impugned award in this appeal, and the appeal being devoid of merit is liable to be dismissed. Appeal is accordingly dismissed. No order as to cost.

Dt: 5-3-2003

(N.G. Nandi, J)

(D.A. Mehta, J)

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